

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

DOVER ELEVATOR SYSTEMS, INC.
Plaintiff/Counter-Defendant

V.

NO. 2:97CV101-B-B

UNITED STEEL WORKERS OF
AMERICA, AFL-CIO, CLC
Defendant/Counter-Plaintiff

and

UNITED STEEL WORKERS OF
AMERICA, AFL-CIO, CLC, LOCAL NO. 3857
Defendant

MEMORANDUM OPINION

This cause comes before the court upon cross-motions for summary judgment. The court has duly considered the parties' memoranda and exhibits and is ready to rule.

FACTS

Charles Holyfield was an employee of the plaintiff, Dover Elevator. At the time of his discharge on July 19, 1996, he had been an employee of the company for over twenty years with minimal record of disciplinary problems. Holyfield was a power unit tester at the company's Horn Lake, Mississippi, facility. In January of 1996, the six power unit testers were notified that the standard for testing power units would be increased to six units per day. During the first quarter of 1996, only one tester out of the six was able to meet the standard. On July 11, 1996, the company issued a letter to all six testers, informing the testers that if they were not meeting the standard by July 12, 1996, disciplinary action would be taken, including discharge. Holyfield

was not able to meet the standard. On July 19, 1996, he was terminated for violation of company rule 21 which prohibits deliberately hindering or limiting production.

The union filed a grievance on behalf of Holyfield. A grievance hearing was held before Arbitrator Ellsworth Steele on March 6, 1997. Steele found that the company was not applying its disciplinary rules even-handedly. Rule 21 calls for discharge for a first violation. Previous employees had been suspended for violation of rule 21, rather than discharged. Steele did not consider this past precedent since the company was under new management, who had made it clear to Holyfield that it would enforce the rules which call for discharge. However, Steele found the case of Nelson Boren to be applicable, and to be representative of the company's failure to mete discipline in an even-handed fashion. Boren had been suspended in June of 1996 for violation of rule 4. Just a few days prior to the hearing, Boren had repeated the offense. Rule 4 calls for discharge upon commission of a second offense. At the time of the hearing, Boren had been suspended pending investigation. Four days later, the company issued an "Employee Warning" to Boren in which it suspended Boren for three weeks for his second violation of rule 4.

When the union submitted its post-hearing brief to the arbitrator, it included as an exhibit a copy of the "Employee Warning" dated March 10, 1997, despite the fact that the arbitrator had instructed the parties not to submit new evidence with their briefs. To further compound the situation, the union failed to include a copy of the exhibit with the brief that was sent to the company. Thus, until the arbitrator issued his order on May 3, 1997, the company did not know that the "Employee Warning" was being considered by the arbitrator. In his ruling, Steele noted that the information regarding the outcome of Boren's case was new evidence supplied by the union, and that, although he was reluctant to do so, he would give consideration to the exhibit.

Steele found that Holyfield was not making a full effort to reach a reasonable standard of output. Steele further found that there was evidence that Holyfield deliberately restricted production and that he attempted to get at least one other person to do so. Nevertheless, “because of the company’s inconsistent application of its disciplinary rules, and [Holyfield’s] good record,” Steele found that there was no good cause for Holyfield’s discharge. Steele awarded Holyfield reinstatement with back pay, subject to a three-month suspension for violation of rule 21.

The company asked Steele to reconsider his decision, noting that Steele had instructed the parties not to submit new evidence with their briefs. The company asserted that it had no chance to address its reasons for suspending Boren rather than discharging him. Steele denied the company’s request for reconsideration. He admitted that he should have sought the company’s response to the new evidence and that he regretted not doing so. However, he found that under the rules of arbitration, he could not grant a unilateral request for reconsideration.

The company filed suit to vacate the arbitrator’s award. The union filed a counter-claim seeking enforcement of the award. Both parties filed cross-motions for summary judgment. There being no genuine issue of material fact, the court finds that summary judgment is appropriate.

LAW

Although the scope of a federal court’s review of an arbitrator’s decision is narrow, arbitration awards are not inviolate. Gulf Coast Indus. Workers Union v. Exxon Co., U.S.A., 991 F.2d 244, 248 (5th Cir. 1993), cert. denied, 510 U.S. 965, 126 L. Ed. 2d 375 (1993); Manville Forest Prods. Corp. v. United Paperworkers Int’l Union, 831 F.2d. 72, 74 (5th Cir. 1987). Arbitration awards may be set aside where the arbitrator is guilty of misconduct. Gulf Coast Indus. Workers Union v. Exxon Co., U.S.A., 70 F.3d 847, 850 (5th Cir. 1995). The question to

be addressed is whether the arbitration proceedings were fundamentally unfair. Id.; Teamsters, Etc., Local Union 657 v. Stanley Structures, Inc., 735 F.2d 903, 906 (5th Cir. 1984).

Upon due consideration, the court finds that the arbitrator's award should be set aside. The court finds that it is fundamentally unfair to take on new evidence after the close of the hearing and not offer the opponent an opportunity for rebuttal. Although arbitration hearings are not conducted under the same set of strict procedural rules as trials in the district court, the presentation of new evidence *ex parte* with the post-hearing brief violates all semblance of fair play. Although the union argues that Holyfield's good work record, standing alone, was an independent basis for Steele's decision, the court finds otherwise. It is obvious that Steele gave considerable weight to the new evidence, and that the apparently inequitable meting of discipline was a substantial factor in Steele's decision. Accordingly, the court finds that the proceedings were fundamentally unfair and that the decision of the arbitrator should be vacated.

CONCLUSION

For the foregoing reasons, the court finds that the plaintiff's motion for summary judgment should be granted and the defendants' motion for summary judgment should be denied. An order will issue accordingly.

THIS, the ____ day of June, 1998.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE